

Iasis Health Care, dba Davis Hospital, and its workers compensation insurance carrier, Kemper Group (jointly referred to as "Iasis"), ask the Utah Labor Commission to review the Administrative Law Judge's award of benefits to S. R. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

### **ISSUES PRESENTED**

Iasis challenges the ALJ's factual findings and legal conclusions regarding Mr. R.'s right to workers' compensation benefits for a neck injury allegedly resulting from a work accident at Iasis on April 6, 2000. Iasis also contends a medical panel should be appointed to consider the medical aspects of Mr. R.'s claim. Because the Commission finds this last issue dispositive, it does not address Iasis's other arguments.

### **BACKGROUND**

As noted in the ALJ's findings of fact, Mr. R. has been diagnosed with a preexisting degenerative spondylitic condition in his cervical spine. Mr. R. alleges an additional work-related cervical injury from lifting a patient at Iasis on April 6, 2000. However, pain did not occur for more than a week later, after Mr. R. had also engaged in other somewhat strenuous non-work activities.

Mr. R. received conservative medical treatment and underwent various diagnostic exams, followed by surgery. Dr. Hood, Mr. R.'s surgeon, expresses the opinion that Mr. R.'s injury was medically caused by his work accident and that surgery was necessary to treat the injury. Dr. Marble, reviewing Mr. R.'s medical records for Iasis, concludes that Mr. R.'s need for surgery was due to his preexisting condition.

### **DISCUSSION AND CONCLUSION OF LAW**

\_\_\_\_\_Section 34A-2-601 of the Act permits the Commission to refer the medical aspects of disputed workers' compensation claims to an impartial medical panel. The Commission's Rule R602-2-2 requires appointment of a medical panel in cases presenting a significant medical issue as established by conflicting medical reports.

In this case, the ALJ declined to appoint a medical panel to resolve the differences between Dr. Hood and Dr. Marble's reports. In declining to appoint a medical panel, the ALJ specifically concluded that Dr. Marble's report was insufficient to establish a medical controversy because Dr. Marble had not personally examined or treated Mr. R.. It appears the ALJ relied on §34A-2-802(2) in rejecting Dr. Marble's report. However, §34A-2-802(2) of the Act specifically provides that "(t)he commission may receive as evidence and use as proof of any fact in dispute all evidence

deemed material and relevant . . . .”

Pursuant to the above-quoted statutory provision, Dr. Marble’s report was properly received into evidence in this matter. The Commission deems Dr. Marble’s report relevant to the medical questions involved in Mr. R.’s claim and sufficient to require appointment of a medical panel. This is particularly true in light of the peculiar history of Mr. R.’s alleged accident and injury.

Having concluded that a medical panel should consider the medical aspects of Mr. R.’s claim, the Commission remands this matter to the ALJ for that purpose. However, the Commission does not restrict the ALJ’s authority over other aspects of the claim. On remand, the ALJ may amend any prior findings or conclusions entered in this matter. The ALJ may also conduct additional proceedings and take any other action necessary to conclude the adjudication of Mr. R.’s claim.

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### **ORDER**

The Commission hereby grants Iasis’s motion for review on the grounds stated in this decision. The Commission sets aside the ALJ’s decision of November 14, 2001, and remands this matter to the ALJ for further proceedings and orders consistent with this decision.

Dated this 28<sup>th</sup> day of March, 2002.

R. Lee Ellertson, Commissioner